

House Study Bill 181 - Introduced

HOUSE FILE _____
BY (PROPOSED COMMITTEE
ON COMMERCE BILL BY
CHAIRPERSON SODERBERG)

A BILL FOR

1 An Act providing for a surplus lines insurance multistate
2 compliance compact, coordinating provisions, and repeals,
3 and including effective date provisions.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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DIVISION I

SURPLUS LINES INSURANCE MULTISTATE COMPLIANCE COMPACT

Section 1. NEW SECTION. 515I.1 **Surplus lines insurance
multistate compliance compact.**

The surplus lines insurance multistate compliance compact is entered into and enacted into law with all jurisdictions legally joining therein, in the form substantially as follows:

1. *Article I — Findings and declaration of purpose.*

a. The state of Iowa and the other states that are parties to this compact find all of the following:

(1) With regard to nonadmitted insurance policies with risk exposures located in multiple states, the 111th United States Congress, has stipulated in the federal Nonadmitted and Reinsurance Reform Act of 2010, Tit. V, subtit. B, of the federal Dodd-Frank Wall Street Reform and Consumer Protection Act, the following:

(a) The placement of nonadmitted insurance shall be subject to the statutory and regulatory requirements solely of the insured's home state.

(b) Any law, regulation, provision, or action of any state that applies or purports to apply to nonadmitted insurance sold to, solicited by, or negotiated with an insured whose home state is another state shall be preempted with respect to such application, except that any state law, rule, or regulation that restricts the placement of workers' compensation insurance or excess insurance for self-funded workers' compensation plans with a nonadmitted insurer shall not be preempted.

(2) In compliance with the federal Nonadmitted and Reinsurance Reform Act of 2010, Tit. V, subtit. B, of the federal Dodd-Frank Wall Street Reform and Consumer Protection Act, no state other than the home state of an insured may require any premium tax payment for nonadmitted insurance, and no state other than an insured's home state may require a surplus lines broker to be licensed in order to sell, solicit, or negotiate nonadmitted insurance with respect to such

1 insured.

2 (3) The federal Nonadmitted and Reinsurance Reform Act of
3 2010, Tit. V, subtit. B, of the federal Dodd-Frank Wall Street
4 Reform and Consumer Protection Act, intends that the states
5 may enter into a compact or otherwise establish procedures
6 to allocate among the states the premium taxes paid to an
7 insured's home state, and that each state adopt nationwide
8 uniform requirements, forms, and procedures, such as an
9 interstate compact, that provide for the reporting, payment,
10 collection, and allocation of premium taxes for nonadmitted
11 insurance.

12 (4) After the expiration of the two-year period beginning
13 on the date of the enactment of the federal Nonadmitted and
14 Reinsurance Reform Act of 2010, Tit. V, subtit. B, of the
15 federal Dodd-Frank Wall Street Reform and Consumer Protection
16 Act, a state shall not collect any fees relating to licensing
17 of an individual or entity as a surplus lines licensee in
18 the state unless the state has in effect at such time laws
19 or regulations that provide for participation by the state
20 in the national insurance producer database of the national
21 association of insurance commissioners, or any other equivalent
22 uniform national database, for the licensure of surplus lines
23 licensees and the renewal of such licenses.

24 (5) A need exists for a system of regulation that will
25 provide for surplus lines insurance to be placed with reputable
26 and financially sound nonadmitted insurers, and that will
27 permit orderly access to surplus lines insurance in this state
28 and encourage insurers to make new and innovative types of
29 insurance available to consumers in this state.

30 (6) Protecting the revenue of this state and other
31 compacting states may be accomplished by facilitating the
32 payment and collection of premium tax on nonadmitted insurance
33 and providing for allocation of premium tax for nonadmitted
34 insurance of multistate risks among the states in accordance
35 with uniform allocation formulas.

1 (7) The efficiency of the surplus lines market may be
2 improved by eliminating duplicative and inconsistent tax and
3 regulatory requirements among the states, and by promoting and
4 protecting the interests of surplus lines licensees who assist
5 such insureds and nonadmitted insurers, thereby ensuring the
6 continued availability of nonadmitted insurance to consumers.

7 (8) Regulatory compliance with respect to nonadmitted
8 insurance placements may be streamlined by providing for
9 exclusive single-state regulatory compliance for nonadmitted
10 insurance of multistate risks, thereby providing certainty
11 regarding such compliance to all persons who have an interest
12 in such transactions, including but not limited to insureds,
13 regulators, surplus lines licensees, other insurance producers,
14 and surplus lines insurers.

15 (9) Coordination of regulatory resources and expertise
16 between state insurance departments and other state agencies,
17 as well as state surplus lines stamping offices, with respect
18 to nonadmitted insurance will be improved.

19 *b.* The general purposes of this compact are all of the
20 following:

21 (1) To implement the express provisions of the federal
22 Nonadmitted and Reinsurance Reform Act of 2010 in Tit. V,
23 subtit. B, of the federal Dodd-Frank Wall Street Reform and
24 Consumer Protection Act.

25 (2) To protect the premium tax revenues of the compacting
26 states through facilitating the payment and collection of
27 premium tax on nonadmitted insurance; and to protect the
28 interests of the compacting states by supporting the continued
29 availability of such insurance to consumers and to provide
30 for allocation of premium tax for nonadmitted insurance of
31 multistate risks among the states in accordance with uniform
32 allocation formulas to be developed, adopted, and implemented
33 by the commission.

34 (3) To streamline and improve the efficiency of the surplus
35 lines market by eliminating duplicative and inconsistent tax

1 and regulatory requirements among the states and promote and
2 protect the interest of surplus lines licensees who assist
3 such insureds and surplus lines insurers, thereby ensuring the
4 continued availability of surplus lines insurance to consumers.

5 (4) To streamline regulatory compliance with respect to
6 nonadmitted insurance placements by providing for exclusive
7 single-state regulatory compliance for nonadmitted insurance
8 of multistate risks, in accordance with rules to be adopted
9 by the commission, thereby providing certainty regarding
10 such compliance to all persons who have an interest in
11 such transactions, including but not limited to insureds,
12 regulators, surplus lines licensees, other insurance producers,
13 and surplus lines insurers.

14 (5) To establish a clearinghouse for receipt and
15 dissemination of premium tax and clearinghouse transaction
16 data related to nonadmitted insurance of multistate risks, in
17 accordance with rules to be adopted by the commission.

18 (6) To improve coordination of regulatory resources and
19 expertise between state insurance departments and other state
20 agencies, as well as state surplus lines stamping offices, with
21 respect to nonadmitted insurance.

22 (7) To adopt uniform rules to provide for premium
23 tax payment, reporting, allocation, data collection and
24 dissemination for nonadmitted insurance of multistate risks and
25 single-state risks, in accordance with rules to be adopted by
26 the commission, thereby promoting the overall efficiency of the
27 nonadmitted insurance market.

28 (8) To adopt uniform mandatory rules with respect to
29 regulatory compliance requirements for all of the following:

30 (a) Foreign insurer eligibility requirements.

31 (b) Surplus lines policyholder notices.

32 (9) To establish the surplus lines insurance multistate
33 compliance compact commission.

34 (10) To coordinate reporting of clearinghouse transaction
35 data on nonadmitted insurance of multistate risks among

1 compacting states and contracting states.

2 (11) To perform these and such other related functions
3 as may be consistent with the purposes of the surplus lines
4 insurance multistate compliance compact.

5 2. *Article II — Definitions.*

6 For purposes of this compact, the following definitions
7 shall apply:

8 a. "*Admitted insurer*" means an insurer that is licensed or
9 authorized to transact the business of insurance under the law
10 of the home state. For purposes of this compact, "*admitted*
11 *insurer*" shall not include a domestic surplus lines insurer as
12 may be defined by applicable state law.

13 b. "*Affiliate*" means with respect to an insured, any entity
14 that controls, is controlled by, or is under common control
15 with the insured.

16 c. "*Allocation formula*" means the uniform methods
17 promulgated by the commission by which insured risk exposures
18 will be apportioned to each state for the purpose of
19 calculating premium taxes due.

20 d. "*Bylaws*" means those bylaws established by the commission
21 for its governance, or for directing or controlling the
22 commission's actions or conduct.

23 e. "*Clearinghouse*" means the commission's operations
24 involving the acceptance, processing, and dissemination, among
25 the compacting states, contracting states, surplus lines
26 licensees, insureds, and other persons, of premium tax and
27 clearinghouse transaction data for nonadmitted insurance of
28 multistate risks, in accordance with this compact and rules to
29 be adopted by the commission.

30 f. "*Clearinghouse transaction data*" means the information
31 regarding nonadmitted insurance of multistate risks required to
32 be reported, accepted, collected, processed, and disseminated
33 by surplus lines licensees for surplus lines insurance
34 and insureds for independently procured insurance under
35 this compact and rules to be adopted by the commission.

1 *"Clearinghouse transaction data"* includes information related to
2 single-state risks if a state elects to have the clearinghouse
3 collect taxes on single-state risks for such state.

4 *g. "Commission"* means the surplus lines insurance multistate
5 compliance compact commission established by this compact.

6 *h. "Commissioner"* means the Iowa commissioner of insurance.

7 *i. "Compacting state"* means any state which has enacted
8 this compact legislation and which has not withdrawn pursuant
9 to article XIV, paragraph *"a"*, or been terminated pursuant to
10 article XIV, paragraph *"b"*.

11 *j. "Contracting state"* means any state which has not
12 enacted this compact legislation but has entered into a written
13 contract with the commission to utilize the services of and
14 fully participate in the clearinghouse.

15 *k. "Control"* means an entity has *"control"* over another
16 entity if:

17 (1) The entity directly or indirectly, or acting through one
18 or more other persons owns, controls, or has the power to vote
19 twenty-five percent or more of any class of voting securities
20 of the other entity.

21 (2) The entity controls in any manner the election of a
22 majority of the directors or trustees of the other entity.

23 *1. "Home state"* means the following:

24 (1) In general. Except as provided in subparagraph (2), the
25 term *"home state"* means, with respect to an insured, either of
26 the following:

27 (a) The state in which an insured maintains its principal
28 place of business or, in the case of an individual, the
29 individual's principal residence.

30 (b) If one hundred percent of the insured risk is located
31 out of the state referred to in subparagraph division (a), the
32 state to which the greatest percentage of the insured's taxable
33 premium for that insurance contract is allocated.

34 (2) Affiliated groups. If more than one insured from an
35 affiliated group are named insureds on a single nonadmitted

1 insurance contract, the term "*home state*" means the home state,
2 as determined pursuant to subparagraph (1), of the member of
3 the affiliated group that has the largest percentage of premium
4 attributed to it under such insurance contract.

5 *m. "Independently procured insurance"* means insurance
6 procured by an insured directly from a surplus lines insurer or
7 other nonadmitted insurer as permitted by the laws of the home
8 state.

9 *n. "Insurer eligibility requirements"* means the criteria,
10 forms, and procedures established to qualify as a surplus lines
11 insurer under the law of the home state provided that such
12 criteria, forms, and procedures are consistent with the express
13 provisions of the federal Nonadmitted and Reinsurance Reform
14 Act in Tit. V, subtit. B, of the federal Dodd-Frank Wall Street
15 Reform and Consumer Protection Act, on and after July 21, 2011.

16 *o. "Member"* means the person or persons chosen by a
17 compacting state as its representative or representatives to
18 the commission provided that each compacting state shall be
19 limited to one vote.

20 *p. "Multistate risk"* means a risk with insured exposures in
21 more than one state.

22 *q. "Nonadmitted insurance"* means surplus lines insurance and
23 independently procured insurance.

24 *r. "Nonadmitted insurer"* means an insurer that is not
25 authorized or admitted to transact the business of insurance
26 under the law of the home state.

27 *s. "Noncompacting state"* means any state which has not
28 adopted this compact.

29 *t. "Policyholder notice"* means the disclosure notice or
30 stamp that is required to be furnished to the applicant or
31 policyholder in connection with a surplus lines insurance
32 placement.

33 *u. "Premium tax"* means with respect to nonadmitted
34 insurance, any tax, fee, assessment, or other charge imposed
35 by a government entity directly or indirectly based on any

1 payment made as consideration for such insurance, including
2 premium deposits, assessments, registration fees, and any
3 other compensation given in consideration for a contract of
4 insurance.

5 *v. "Principal place of business"* means with respect to
6 determining the home state of the insured, the state where the
7 insured maintains its headquarters, and where the insured's
8 high-level officers direct, control, and coordinate the
9 business activities of the insured.

10 *w. "Purchasing group"* means any group formed pursuant to the
11 federal Liability Risk Retention Act which has as one of its
12 purposes the purchase of liability insurance on a group basis,
13 purchases such insurance only for its group members and only
14 to cover their similar or related liability exposure, and is
15 composed of members whose businesses or activities are similar
16 or related with respect to the liability to which members are
17 exposed by virtue of any related, similar, or common business,
18 trade, product, services, premises, or operations, and is
19 domiciled in any state.

20 *x. "Rule"* means a statement of general or particular
21 applicability and future effect promulgated by the commission
22 designed to implement, interpret, or prescribe law or policy
23 or describing the organization, procedure, or practice
24 requirements of the commission which shall have the force and
25 effect of law in the compacting states.

26 *y. "Single-state risk"* means a risk with insured exposures
27 in only one state.

28 *z. "State"* means any state, district, or territory of the
29 United States of America.

30 *aa. "State transaction documentation"* means the information
31 required under the laws of the home state to be filed by
32 surplus lines licensees in order to report surplus lines
33 insurance and verify compliance with surplus lines laws, and by
34 insureds in order to report independently procured insurance.

35 *ab. "Surplus lines insurance"* means insurance procured

1 by a surplus lines licensee from a surplus lines insurer or
2 other nonadmitted insurer as permitted under the law of the
3 home state. For purposes of this compact, "*surplus lines*
4 *insurance*" also means excess lines insurance as may be defined
5 by applicable state law.

6 *ac.* "*Surplus lines insurer*" means a nonadmitted insurer
7 eligible under the law of the home state to accept business
8 from a surplus lines licensee. For purposes of this compact,
9 "*surplus lines insurer*" also means an insurer which is permitted
10 to write surplus lines insurance under the laws of the state
11 where such insurer is domiciled.

12 *ad.* "*Surplus lines licensee*" means an individual, firm, or
13 corporation licensed under the law of the home state to place
14 surplus lines insurance.

15 3. *Article III — Establishment of the commission and venue.*

16 *a.* The compacting states hereby create and establish a joint
17 public agency known as the surplus lines insurance multistate
18 compliance compact commission.

19 *b.* Pursuant to article IV, the commission shall have the
20 power to adopt mandatory rules which establish exclusive home
21 state authority regarding nonadmitted insurance of multistate
22 risks, allocation formulas, clearinghouse transaction data,
23 a clearinghouse for receipt and distribution of allocated
24 premium tax and clearinghouse transaction data, and uniform
25 rulemaking procedures and rules for the purpose of financing,
26 administering, operating, and enforcing compliance with the
27 provisions of this compact, its bylaws, and rules.

28 *c.* Pursuant to article IV, the commission shall have
29 the power to adopt mandatory rules establishing foreign
30 insurer eligibility requirements and a concise and objective
31 policyholder notice regarding the nature of a surplus lines
32 placement.

33 *d.* The commission is a body corporate and politic, and an
34 instrumentality of the compacting states.

35 *e.* The commission is solely responsible for its liabilities

1 except as otherwise specifically provided in this compact.

2 *f.* Venue is proper and judicial proceedings by or against
3 the commission shall be brought solely and exclusively in a
4 court of competent jurisdiction where the principal office of
5 the commission is located. The commission may waive venue and
6 jurisdictional defenses to the extent it adopts or consents to
7 participate in alternative dispute resolution proceedings.

8 4. *Article IV — Authority to establish mandatory rules.*

9 The commission shall adopt mandatory rules which establish
10 all of the following:

11 *a.* Allocation formulas for each type of nonadmitted
12 insurance coverage, which allocation formulas must be used
13 by each compacting state and contracting state in acquiring
14 premium tax and clearinghouse transaction data from surplus
15 lines licensees and insureds for reporting to the clearinghouse
16 created by the commission. Such allocation formulas shall
17 be established with input from surplus lines licensees and
18 be based upon readily available data with simplicity and
19 uniformity for the surplus lines licensee as a material
20 consideration.

21 *b.* Uniform clearinghouse transaction data reporting
22 requirements for all information reported to the clearinghouse.

23 *c.* Methods by which compacting states and contracting
24 states require surplus lines licensees and insureds to pay
25 premium tax and to report clearinghouse transaction data to
26 the clearinghouse, including but not limited to processing
27 clearinghouse transaction data through state stamping and
28 service offices, state insurance departments, or other
29 state-designated agencies or entities.

30 *d.* (1) That nonadmitted insurance of multistate risks shall
31 be subject to all of the regulatory compliance requirements of
32 the home state exclusively. Home state regulatory compliance
33 requirements applicable to surplus lines insurance shall
34 include but not be limited to the following:

35 (i) Persons required to be licensed to sell, solicit, or

1 negotiate surplus lines insurance.

2 (b) Insurer eligibility requirements or other approved
3 nonadmitted insurer requirements.

4 (c) Diligent search.

5 (d) State transaction documentation and clearinghouse
6 transaction data regarding the payment of premium tax as
7 set forth in this compact and rules to be adopted by the
8 commission.

9 (2) Home state regulatory compliance requirements
10 applicable to independently procured insurance placements shall
11 include but not be limited to providing state transaction
12 documentation and clearinghouse transaction data regarding the
13 payment of premium tax as set forth in this compact and rules
14 to be adopted by the commission.

15 e. That each compacting state and contracting state may
16 charge its own rate of taxation on the premium allocated
17 to such state based on the applicable allocation formula
18 provided that the state establishes one single rate of taxation
19 applicable to all nonadmitted insurance transactions and no
20 other tax, fee assessment, or other charge by any governmental
21 or quasi-governmental agency is permitted. Notwithstanding the
22 foregoing, stamping office fees may be charged as a separate,
23 additional cost unless such fees are incorporated into a
24 state's single rate of taxation.

25 f. That any change in the rate of taxation by any compacting
26 state or contracting state is restricted to changes made
27 prospectively on not less than ninety days advance notice to
28 the compact commission.

29 g. That each compacting state and contracting state shall
30 require premium tax payments either annually, semiannually, or
31 quarterly utilizing one or more of the following dates only:
32 March 1, June 1, September 1, and December 1.

33 h. That each compacting state and contracting state prohibit
34 any other state agency or political subdivision from requiring
35 surplus lines licensees to provide clearinghouse transaction

1 data and state transaction documentation other than to the
2 insurance department or tax officials of the home state or one
3 single designated agent thereof.

4 *i.* The obligation of the home state by itself, through
5 a designated agent, surplus lines stamping or service
6 office, to collect clearinghouse transaction data from
7 surplus lines licensees and from insureds for independently
8 procured insurance, where applicable, for reporting to the
9 clearinghouse.

10 *j.* A method for the clearinghouse to periodically report to
11 compacting states, contracting states, surplus lines licensees,
12 and insureds who independently procure insurance, all premium
13 taxes owed to each of the compacting states and contracting
14 states, the dates upon which payment of such premium taxes are
15 due, and a method to pay the taxes through the clearinghouse.

16 *k.* That each surplus lines licensee is required to be
17 licensed only in the home state of each insured for whom
18 surplus lines insurance has been procured.

19 *l.* That a policy considered to be surplus lines insurance
20 in the insured's home state shall be considered surplus lines
21 insurance in all compacting states and contracting states, and
22 taxed as a surplus lines transaction in all states to which a
23 portion of the risk is allocated. Each compacting state and
24 contracting state shall require each surplus lines licensee
25 to pay to every other compacting state and contracting state
26 premium taxes on each multistate risk through the clearinghouse
27 at such tax rate charged on surplus lines transactions in such
28 other compacting states and contracting states on the portion
29 of the risk in each such compacting state and contracting
30 state as determined by the applicable uniform allocation
31 formula adopted by the commission. A policy considered to be
32 independently procured insurance in the insured's home state
33 shall be considered independently procured insurance in all
34 compacting states and contracting states. Each compacting
35 state and contracting state shall require the insured to

1 pay every other compacting state and contracting state the
2 independently procured insurance premium tax on each multistate
3 risk through the clearinghouse pursuant to the uniform
4 allocation formula adopted by the commission.

5 *m.* Uniform foreign insurer eligibility requirements as
6 authorized by the federal Nonadmitted and Reinsurance Reform
7 Act of 2010, Tit. V, subtit. B, of the federal Dodd-Frank Wall
8 Street Reform and Consumer Protection Act.

9 *n.* A uniform policyholder notice.

10 *o.* Uniform treatment of purchasing group surplus lines
11 insurance placements.

12 *5. Article V — Powers of the commission.*

13 The commission shall have the following powers:

14 *a.* To promulgate rules and operating procedures, pursuant to
15 article VIII of this compact, which shall have the force and
16 effect of law and shall be binding in the compacting states to
17 the extent and in the manner provided in this compact.

18 *b.* To bring and prosecute legal proceedings or actions in
19 the name of the commission, provided that the standing of any
20 state insurance department to sue or be sued under applicable
21 law shall not be affected.

22 *c.* To issue subpoenas requiring the attendance and testimony
23 of witnesses and the production of evidence, provided however,
24 the commission is not empowered to demand or subpoena records
25 or data from nonadmitted insurers.

26 *d.* To establish and maintain offices including the
27 creation of a clearinghouse for the receipt of premium tax and
28 clearinghouse transaction data regarding nonadmitted insurance
29 of multistate risks, single-state risks for states which elect
30 to require surplus lines licensees to pay premium tax on single
31 state risks through the clearinghouse, and tax reporting forms.

32 *e.* To purchase and maintain insurance and bonds.

33 *f.* To borrow, accept, or contract for services of personnel,
34 including but not limited to employees of a compacting state or
35 stamping office, pursuant to an open, transparent, objective

1 competitive process and procedure adopted by the commission.

2 *g.* To hire employees, professionals, or specialists, and
3 elect or appoint officers, and to fix their compensation,
4 define their duties and give them appropriate authority
5 to carry out the purposes of the compact, and determine
6 their qualifications, pursuant to an open, transparent,
7 objective competitive process and procedure adopted by the
8 commission, and to establish the commission's personnel
9 policies and programs relating to conflicts of interest, rates
10 of compensation, and qualifications of personnel, and other
11 related personnel matters.

12 *h.* To accept any and all appropriate donations and grants
13 of money, equipment, supplies, materials, and services, and to
14 receive, utilize, and dispose of the same, provided that at all
15 times the commission shall avoid any appearance of impropriety
16 or conflict of interest.

17 *i.* To lease, purchase, accept appropriate gifts or
18 donations of, or otherwise to own, hold, improve, or use, any
19 property, real, personal, or mixed, provided that at all times
20 the commission shall avoid any appearance of impropriety or
21 conflict of interest.

22 *j.* To sell, convey, mortgage, pledge, lease, exchange,
23 abandon, or otherwise dispose of any property real, personal,
24 or mixed.

25 *k.* To provide for tax audit rules and procedures for the
26 compacting states with respect to the allocation of premium
27 taxes including all of the following:

28 (1) Minimum audit standards, including sampling methods.

29 (2) Review of internal controls.

30 (3) Cooperation and sharing of audit responsibilities
31 between compacting states.

32 (4) Handling of refunds or credits due to overpayments or
33 improper allocation of premium taxes.

34 (5) Taxpayer records to be reviewed including a minimum
35 retention period.

1 (6) Authority of compacting states to review, challenge, or
2 reaudit taxpayer records.

3 *l.* To enforce compliance by compacting states and
4 contracting states with rules and bylaws pursuant to the
5 authority set forth in article XIV.

6 *m.* To provide for dispute resolution among compacting states
7 and contracting states.

8 *n.* To advise compacting states and contracting states on
9 tax-related issues relating to insurers, insureds, surplus
10 lines licensees, agents, or brokers domiciled or doing business
11 in noncompacting states, consistent with the purposes of this
12 compact.

13 *o.* To make available advice and training to those personnel
14 in state stamping offices, state insurance departments or
15 other state departments for record keeping, tax compliance,
16 and tax allocations, and to be a resource for state insurance
17 departments and other state departments.

18 *p.* To establish a budget and make expenditures.

19 *q.* To borrow money.

20 *r.* To appoint and oversee committees, including advisory
21 committees comprised of members, state insurance regulators,
22 state legislators or their representatives, insurance industry
23 and consumer representatives, and such other interested persons
24 as may be designated in this compact and the bylaws.

25 *s.* To establish an executive committee of not less than
26 seven nor more than fifteen representatives, which shall
27 include officers elected by the commission and such other
28 representatives as provided for herein and determined by the
29 bylaws. Representatives of the executive committee shall serve
30 a one-year term. Representatives of the executive committee
31 shall be entitled to one vote each. The executive committee
32 shall have the power to act on behalf of the commission, with
33 the exception of rulemaking, during periods when the commission
34 is not in session. The executive committee shall oversee the
35 day-to-day activities of the administration of the compact,

1 including the activities of the operations committee created
2 under this article and compliance and enforcement of the
3 provisions of the compact, its bylaws, and rules, and such
4 other duties as provided herein and as deemed necessary.

5 *t.* To establish an operations committee of not less than
6 seven and not more than fifteen representatives to provide
7 analysis, advice, determinations, and recommendations regarding
8 technology, software, and systems integration to be acquired by
9 the commission and to provide analysis, advice, determinations,
10 and recommendations regarding the establishment of mandatory
11 rules to be adopted by the commission.

12 *u.* To enter into contracts with contracting states so
13 that contracting states can utilize the services of and fully
14 participate in the clearinghouse subject to the terms and
15 conditions set forth in such contracts.

16 *v.* To adopt and use a corporate seal.

17 *w.* To perform such other functions as may be necessary or
18 appropriate to achieve the purposes of this compact consistent
19 with the state regulation of the business of insurance.

20 6. *Article VI — Organization of the commission.*

21 *a.* Membership, voting, and bylaws.

22 (1) Each compacting state shall have and be limited to one
23 member. Each state shall determine the qualifications and the
24 method by which it selects a member and set forth the selection
25 process in the enabling provision of the legislation which
26 enacts this compact. In the absence of such a provision, the
27 member shall be appointed by the governor of such compacting
28 state. Any member may be removed or suspended from office as
29 provided by the law of the state from which the member shall
30 be appointed. Any vacancy occurring in the commission shall
31 be filled in accordance with the laws of the compacting state
32 wherein the vacancy exists.

33 (2) Each member shall be entitled to one vote and shall
34 otherwise have an opportunity to participate in the governance
35 of the commission in accordance with the bylaws.

1 (3) The commission shall, by a majority vote of the members,
2 prescribe bylaws to govern its conduct as may be necessary
3 or appropriate to carry out the purposes and exercise the
4 powers of the compact including but not limited to all of the
5 following:

6 (a) Establishing the fiscal year of the commission.

7 (b) Providing reasonable procedures for holding meetings
8 of the commission, the executive committee, and the operations
9 committee.

10 (c) Providing reasonable standards and procedures for all
11 of the following:

12 (i) The establishment and meetings of committees.

13 (ii) Governing any general or specific delegation of any
14 authority or function of the commission.

15 (d) Providing reasonable procedures for calling and
16 conducting meetings of the commission that consist of a
17 majority of commission members, ensuring reasonable advance
18 notice of each such meeting and providing for the right of
19 citizens to attend each such meeting with enumerated exceptions
20 designed to protect the public's interest, the privacy of
21 individuals, and insurers' and surplus lines licensees'
22 proprietary information, including trade secrets. The
23 commission may meet in camera only after a majority of the
24 entire membership votes to close a meeting in whole or in part.
25 As soon as practicable, the commission shall make public a copy
26 of the vote to close the meeting revealing the vote of each
27 member with no proxy votes allowed, and votes taken during such
28 meeting.

29 (e) Establishing the titles, duties, and authority and
30 reasonable procedures for the election of the officers of the
31 commission.

32 (f) Providing reasonable standards and procedures for the
33 establishment of the personnel policies and programs of the
34 commission. Notwithstanding any civil service or other similar
35 laws of any compacting state, the bylaws shall exclusively

1 govern the personnel policies and programs of the commission.

2 (g) Promulgating a code of ethics to address permissible and
3 prohibited activities of commission members and employees.

4 (h) Providing a mechanism for winding up the operations of
5 the commission and the equitable disposition of any surplus
6 funds that may exist after the termination of the compact after
7 the payment or reserving of all of its debts and obligations.

8 (4) The commission shall publish its bylaws in a convenient
9 form and file a copy thereof and a copy of any amendment
10 thereto, with the appropriate agency or officer in each of the
11 compacting states.

12 b. Executive committee, personnel, and chairperson.

13 (1) An executive committee of the commission shall be
14 established. All actions of the executive committee, including
15 compliance and enforcement, are subject to the review and
16 ratification of the commission as provided in the bylaws.

17 (2) The executive committee shall have no more than fifteen
18 representatives, or one for each state if there are less than
19 fifteen compacting states, who shall serve for a term and shall
20 be established in accordance with the bylaws.

21 (3) The executive committee shall have such authority and
22 duties as may be set forth in the bylaws, including but not
23 limited to all of the following:

24 (a) Managing the affairs of the commission in a manner
25 consistent with the bylaws and purposes of the commission.

26 (b) Establishing and overseeing an organizational structure
27 within, and appropriate procedures for the commission to
28 provide for the creation of rules and operating procedures.

29 (c) Overseeing the offices of the commission.

30 (d) Planning, implementing, and coordinating communications
31 and activities with other state, federal, and local government
32 organizations in order to advance the goals of the commission.

33 (4) The commission shall annually elect officers from
34 the executive committee, with each having such authority and
35 duties, as may be specified in the bylaws.

1 (5) The executive committee may, subject to the approval
2 of the commission, appoint or retain an executive director
3 for such period, upon such terms and conditions and for such
4 compensation as the commission may deem appropriate. The
5 executive director shall serve as secretary to the commission,
6 but shall not be a member of the commission. The executive
7 director shall hire and supervise such other persons as may be
8 authorized by the commission.

9 c. Operations committee.

10 (1) An operations committee shall be established. All
11 actions of the operations committee are subject to the review
12 and oversight of the commission and the executive committee and
13 must be approved by the commission. The executive committee
14 shall accept the determinations and recommendations of the
15 operations committee unless good cause is shown why such
16 determinations and recommendations should not be approved.
17 Any disputes as to whether good cause exists to reject any
18 determination or recommendation of the operations committee
19 shall be resolved by the majority vote of the commission.

20 (2) The operations committee shall have no more than fifteen
21 representatives, or one for each state if there are less than
22 fifteen compacting states, who shall serve for a term and shall
23 be established as set forth in the bylaws.

24 (3) The operations committee shall have responsibility for
25 all of the following:

26 (a) Evaluating technology requirements for the
27 clearinghouse, assessing existing systems used by state
28 regulatory agencies and state stamping offices, to maximize
29 the efficiency and successful integration of the clearinghouse
30 technology systems with state and state stamping office
31 technology platforms and to minimize costs to the states, state
32 stamping offices, and the clearinghouse.

33 (b) Making recommendations to the executive committee
34 based on its analysis and determination of the clearinghouse
35 technology requirements and compatibility with existing state

1 and state stamping office systems.

2 (c) Evaluating the most suitable proposals for adoption
3 as mandatory rules, assessing such proposals for ease
4 of integration by states and likelihood of successful
5 implementation, to report to the executive committee its
6 determinations and recommendations.

7 (d) Such other duties and responsibilities as are
8 delegated to it by the bylaws, the executive committee, or the
9 commission.

10 (4) All representatives of the operations committee shall
11 be individuals who have extensive experience or employment
12 in the surplus lines insurance business including but not
13 limited to executives and attorneys employed by surplus lines
14 insurers, surplus lines licensees, law firms, state insurance
15 departments, and state stamping offices. Operations committee
16 representatives from compacting states which utilize the
17 services of a state stamping office shall appoint the chief
18 operating officer or a senior manager of the state stamping
19 office to the operations committee.

20 d. Legislative and advisory committees.

21 (1) A legislative committee comprised of state legislators
22 or their designees shall be established to monitor the
23 operations of and make recommendations to the commission,
24 including the executive committee, provided that the manner of
25 selection and term of any legislative committee member shall
26 be as set forth in the bylaws. Prior to the adoption by the
27 commission of any uniform standard, revision to the bylaws,
28 annual budget, or other significant matter as may be provided
29 in the bylaws, the executive committee shall consult with and
30 report to the legislative committee.

31 (2) The commission may establish additional advisory
32 committees as its bylaws may provide for the carrying out of
33 its functions.

34 e. Corporate records of the commission. The commission
35 shall maintain its corporate books and records in accordance

1 with the bylaws.

2 *f. Qualified immunity, defense, and indemnification.*

3 (1) The members, officers, executive director, employees,
4 and representatives of the commission, the executive committee,
5 and any other committee of the commission shall be immune from
6 suit and liability, either personally or in their official
7 capacity, for any claim for damage to or loss of property, or
8 personal injury or other civil liability, caused by or arising
9 out of any actual or alleged act, error, or omission that
10 occurred, or that the person against whom the claim is made had
11 a reasonable basis for believing occurred within the scope of
12 commission employment, duties, or responsibilities, provided
13 that nothing in this subparagraph shall be construed to protect
14 any such person from suit or liability for any damage, loss,
15 injury, or liability caused by the intentional, or willful or
16 wanton, misconduct of that person.

17 (2) The commission shall defend any member, officer,
18 executive director, employee, or representative of the
19 commission, executive committee, or any other committee of the
20 commission in any civil action seeking to impose liability
21 arising out of any actual or alleged act, error, or omission
22 that occurred within the scope of commission employment,
23 duties, or responsibilities, or that the person against
24 whom the claim is made had a reasonable basis for believing
25 occurred within the scope of commission employment, duties,
26 or responsibilities, provided that nothing herein shall be
27 construed to prohibit that person from retaining that person's
28 own counsel; and provided further, that the actual or alleged
29 act, error, or omission did not result from that person's
30 intentional, or willful or wanton, misconduct.

31 (3) The commission shall indemnify and hold harmless
32 any member, officer, executive director, employee, or
33 representative of the commission, executive committee, or
34 any other committee of the commission for the amount of any
35 settlement or judgment obtained against that person arising

1 out of any actual or alleged act, error, or omission that
2 occurred within the scope of commission employment, duties,
3 or responsibilities, or that such person had a reasonable
4 basis for believing occurred within the scope of commission
5 employment, duties, or responsibilities, provided that the
6 actual or alleged act, error, or omission did not result from
7 the intentional, or willful or wanton, misconduct of that
8 person.

9 7. *Article VII — Meetings and acts of the commission.*

10 a. The commission shall meet and take such actions as are
11 consistent with the provisions of this compact and the bylaws.

12 b. Each member of the commission shall have the right
13 and power to cast a vote to which that compacting state is
14 entitled and to participate in the business and affairs of the
15 commission. A member shall vote in person or by such other
16 means as provided in the bylaws. The bylaws may provide for
17 members' participation in meetings by telephone or other means
18 of communication.

19 c. The commission shall meet at least once during each
20 calendar year. Additional meetings shall be held as set forth
21 in the bylaws.

22 d. Public notice shall be given of all meetings and all
23 meetings shall be open to the public, except as set forth in
24 the rules or otherwise provided in the compact.

25 e. The commission shall promulgate rules concerning its
26 meetings consistent with the principles contained in the
27 federal Government in the Sunshine Act, 5 U.S.C. § 552b, as may
28 be amended.

29 f. The commission and its committees may close a meeting, or
30 portion thereof, where it determines by majority vote that an
31 open meeting would be likely to do any of the following:

32 (1) Relate solely to the commission's internal personnel
33 practices and procedures.

34 (2) Disclose matters specifically exempted from disclosure
35 by federal and state statute.

1 (3) Disclose trade secrets, or commercial or financial
2 information which is privileged or confidential.

3 (4) Involve accusing a person of a crime, or formally
4 censuring a person.

5 (5) Disclose information of a personal nature where
6 disclosure would constitute a clearly unwarranted invasion of
7 personal privacy.

8 (6) Disclose investigative records compiled for law
9 enforcement purposes.

10 (7) Specifically relate to the commission's issuance of a
11 subpoena, or its participation in a civil action or other legal
12 proceeding.

13 g. For a meeting, or portion of a meeting, closed pursuant
14 to this article, the commission's legal counsel or designee
15 shall certify that the meeting may be closed and shall
16 reference each relevant exemptive provision. The commission
17 shall keep minutes which shall fully and clearly describe all
18 matters discussed in a meeting and shall provide a full and
19 accurate summary of actions taken, and the reasons therefor,
20 including a description of the views expressed and the record
21 of a roll call vote. All documents considered in connection
22 with an action shall be identified in such minutes. All
23 minutes and documents of a closed meeting shall remain under
24 seal, subject to release by a majority vote of the commission.

25 8. *Article VIII — Rules and operating procedures —*
26 *rulemaking functions of the commission.*

27 a. The commission shall promulgate reasonable rules in
28 order to effectively and efficiently achieve the purposes of
29 this compact. Notwithstanding the foregoing, in the event the
30 commission exercises its rulemaking authority in a manner that
31 is beyond the scope of the purposes of this compact, or the
32 powers granted hereunder, then such an action by the commission
33 shall be invalid and have no force or effect.

34 b. Rules shall be made pursuant to a rulemaking process
35 that substantially conforms to the federal 1981 Model State

1 Administrative Procedure Act, Uniform Laws Annotated, Vol. 15,
2 p. 1 (2000) as amended, as may be appropriate to the operations
3 of the commission.

4 *c.* All rules and amendments thereto shall become effective
5 as of the date specified in each rule, operating procedure, or
6 amendment.

7 *d.* Not later than thirty days after a rule is promulgated,
8 any person may file a petition for judicial review of the rule;
9 provided that the filing of such a petition shall not stay or
10 otherwise prevent the rule from becoming effective unless the
11 court finds that the petitioner has a substantial likelihood of
12 success. The court shall give deference to the actions of the
13 commission consistent with applicable law and shall not find
14 the rule to be unlawful if the rule represents a reasonable
15 exercise of the commission's authority.

16 9. *Article IX — Commission records and enforcement.*

17 *a.* The commission shall promulgate rules establishing
18 conditions and procedures for public inspection and copying of
19 its information and official records, except such information
20 and records involving the privacy of individuals, insurers,
21 insureds, or surplus lines licensee trade secrets. State
22 transaction documentation and clearinghouse transaction
23 data collected by the clearinghouse shall be used for only
24 those purposes expressed in or reasonably implied under the
25 provisions of this compact and the commission shall afford this
26 data the broadest protections as permitted by any applicable
27 law for proprietary information, trade secrets, or personal
28 data. The commission may promulgate additional rules under
29 which it may make available to federal and state agencies,
30 including law enforcement agencies, records and information
31 otherwise exempt from disclosure, and may enter into agreements
32 with such agencies to receive or exchange information
33 or records subject to nondisclosure and confidentiality
34 provisions.

35 *b.* Except as to privileged records, data, and information,

1 the laws of any compacting state pertaining to confidentiality
2 or nondisclosure shall not relieve any compacting state
3 member of the duty to disclose any relevant records, data,
4 or information to the commission, provided that disclosure
5 to the commission shall not be deemed to waive or otherwise
6 affect any confidentiality requirement, and further provided
7 that, except as otherwise expressly provided in this compact,
8 the commission shall not be subject to the compacting state's
9 laws pertaining to confidentiality and nondisclosure with
10 respect to records, data, and information in the commission's
11 possession. Confidential information of the commission shall
12 remain confidential after such information is provided to any
13 member, and the commission shall maintain the confidentiality
14 of any information provided by a member that is confidential
15 under that member's state law.

16 *c.* The commission shall monitor compacting states for
17 compliance with duly adopted bylaws and rules. The commission
18 shall notify any noncomplying compacting state in writing of
19 the state's noncompliance with commission bylaws or rules. If
20 a noncomplying compacting state fails to remedy the state's
21 noncompliance within the time specified in the notice of
22 noncompliance, the compacting state shall be deemed to be in
23 default as set forth in article XIV.

24 10. *Article X — Dispute resolution.*

25 *a.* Before a member may bring an action in a court of
26 competent jurisdiction for violation of any provision,
27 standard, or requirement of the compact, the commission shall
28 attempt, upon the request of a member, to resolve any disputes
29 or other issues that are subject to this compact and which
30 may arise between two or more compacting states, contracting
31 states, or noncompacting states, and the commission shall
32 promulgate a rule providing alternative dispute resolution
33 procedures for such disputes.

34 *b.* The commission shall also provide alternative dispute
35 resolution procedures to resolve any disputes between insureds

1 or surplus lines licensees concerning a tax calculation or
2 allocation or related issues which are the subject of this
3 compact.

4 *c.* Any alternative dispute resolution procedures shall be
5 utilized in circumstances where a dispute arises as to which
6 state constitutes the home state.

7 11. *Article XI — Review of commission decisions.*

8 *a.* Except as necessary for promulgating rules to fulfill
9 the purposes of this compact, the commission shall not have
10 authority to otherwise regulate insurance in the compacting
11 states.

12 *b.* Not later than thirty days after the commission has
13 given notice of any rule or allocation formula, any third-party
14 filer or compacting state may appeal the determination to a
15 review panel appointed by the commission. The commission
16 shall promulgate rules to establish procedures for appointing
17 such review panels and provide for notice and hearing. An
18 allegation that the commission, in making compliance or tax
19 determinations, acted arbitrarily, capriciously, or in a manner
20 that is an abuse of discretion or otherwise not in accordance
21 with the law, is subject to judicial review in accordance with
22 article III, paragraph "f".

23 *c.* The commission shall have authority to monitor, review,
24 and reconsider commission decisions upon a finding that the
25 determinations or allocations do not meet the relevant rule.
26 Where appropriate, the commission may withdraw or modify its
27 determination or allocation after proper notice and hearing,
28 subject to the appeal process in paragraph "b".

29 12. *Article XII — Finance.*

30 *a.* The commission shall pay or provide for the payment of
31 the reasonable expenses of its establishment and organization.
32 To fund the cost of its initial operations, the commission
33 may accept contributions, grants, and other forms of funding
34 from the state stamping offices, compacting states, and other
35 sources.

1 *b.* The commission shall collect a fee payable by the
2 insured directly or through a surplus lines licensee on each
3 transaction processed through the clearinghouse, to cover the
4 cost of the operations and activities of the commission and its
5 staff in a total amount sufficient to cover the commission's
6 annual budget.

7 *c.* The commission's budget for a fiscal year shall not be
8 approved until it has been subject to notice and comment as set
9 forth in article VIII of this compact.

10 *d.* The commission shall be regarded as performing essential
11 governmental functions in exercising such powers and functions
12 and in carrying out the provisions of this compact and of any
13 law relating thereto, and shall not be required to pay any
14 taxes or assessments of any character, levied by any state or
15 political subdivision thereof, upon any of the property used
16 by the commission for such purposes, or any income or revenue
17 therefrom, including any profit from a sale or exchange.

18 *e.* The commission shall keep complete and accurate accounts
19 of all its internal receipts, including grants and donations,
20 and disbursements for all funds under its control. The
21 internal financial accounts of the commission shall be subject
22 to the accounting procedures established under the commission's
23 bylaws. The financial accounts and reports including the
24 system of internal controls and procedures of the commission
25 shall be audited annually by an independent certified public
26 accountant. Upon the determination of the commission, but
27 not less frequently than every three years, the review of the
28 independent auditor shall include a management and performance
29 audit of the commission. The commission shall make an annual
30 report to the governor and legislature of the compacting
31 states, which shall include a report of the independent audit.
32 The commission's internal accounts shall not be confidential
33 and such materials may be shared with the commissioner, the
34 controller, or the stamping office of any compacting state upon
35 request, provided, however, that any work papers related to any

1 internal or independent audit and any information regarding
2 the privacy of individuals, and licensees' and insurers'
3 proprietary information, including trade secrets, shall remain
4 confidential.

5 *f.* No compacting state shall have any claim to or ownership
6 of any property held by or vested in the commission or to
7 any commission funds held pursuant to the provisions of this
8 compact.

9 *g.* The commission shall not make any political contributions
10 to candidates for elected office, elected officials, political
11 parties, or political action committees. The commission shall
12 not engage in lobbying except with respect to changes to this
13 compact.

14 13. *Article XIII — Compacting states, effective date, and*
15 *amendment.*

16 *a.* Any state is eligible to become a compacting state.

17 *b.* The compact shall become effective and binding upon
18 legislative enactment of the compact into law by two compacting
19 states, provided the commission shall become effective for
20 purposes of adopting rules, and creating the clearinghouse when
21 there are a total of ten compacting states and contracting
22 states or, alternatively, when there are compacting states and
23 contracting states representing greater than forty percent of
24 the surplus lines insurance premium volume based on records of
25 the percentage of surplus lines insurance premium set forth
26 in paragraph "d". Thereafter, it shall become effective
27 and binding as to any other compacting state upon enactment
28 of the compact into law by that state. Notwithstanding the
29 foregoing, the clearinghouse operations and the duty to report
30 clearinghouse transaction data shall begin on the first January
31 1 or July 1 following the first anniversary of the commission
32 effective date. For states which join the compact subsequent
33 to the effective date, a start date for reporting clearinghouse
34 transaction data shall be set by the commission, provided
35 that surplus lines licensees and all other interested parties

1 receive not less than ninety days' advance notice.

2 *c.* Amendments to the compact may be proposed by the
 3 commission for enactment by the compacting states. No
 4 amendment shall become effective and binding upon the
 5 commission and the compacting states unless and until all
 6 compacting states enact the amendment into law.

7 *d.* Surplus lines insurance premiums by state:

8	State	Premiums	Share
9		based on tax paid	of total premiums
10	<hr/>		
11	Alabama	445,746,000	1.47 percent
12	Alaska	89,453,519	0.29 percent
13	Arizona	663,703,267	2.18 percent
14	Arkansas	201,859,750	0.66 percent
15	California	5,622,450,467	18.49 percent
16	Colorado	543,781,333	1.79 percent
17	Connecticut	329,358,800	1.08 percent
18	Delaware	92,835,950	0.31 percent
19	Florida	2,660,908,760	8.75 percent
20	Georgia	895,643,150	2.95 percent
21	Hawaii	232,951,489	0.77 percent
22	Idaho	704,202,255	0.24 percent
23	Illinois	1,016,504,629	3.34 percent
24	Indiana	412,265,320	1.36 percent
25	Iowa	135,130,933	0.44 percent
26	Kansas	160,279,300	0.53 percent
27	Kentucky	167,996,133	0.55 percent
28	Louisiana	853,173,280	2.81 percent
29	Maine	60,111,200	0.20 percent
30	Maryland	434,887,600	1.43 percent
31	Massachusetts	708,640,225	2.33 percent
32	Michigan	703,357,040	2.31 percent
33	Minnesota	393,128,400	1.29 percent
34	Mississippi	263,313,175	0.87 percent
35	Missouri	404,489,860	1.33 percent

1	Montana	64,692,873	0.21 percent
2	Nebraska	92,141,167	0.30 percent
3	Nevada	354,271,514	1.17 percent
4	New Hampshire	102,946,250	0.34 percent
5	New Jersey	1,087,994,033	3.58 percent
6	New Mexico	67,608,458	0.22 percent
7	New York	2,768,618,083	9.11 percent
8	North Carolina	514,965,060	1.69 percent
9	North Dakota	36,223,943	0.12 percent
10	Ohio	342,000,000	1.12 percent
11	Oklahoma	319,526,400	1.05 percent
12	Oregon	312,702,150	1.03 percent
13	Pennsylvania	780,666,667	2.57 percent
14	Rhode Island	71,794,067	0.24 percent
15	South Carolina	412,489,825	1.36 percent
16	South Dakota	38,702,120	0.13 percent
17	Tennessee	451,775,240	1.49 percent
18	Texas	3,059,170,454	10.06 percent
19	Utah	142,593,412	0.47 percent
20	Vermont	41,919,433	0.14 percent
21	Virginia	611,530,667	2.01 percent
22	Washington	739,932,050	2.43 percent
23	West Virginia	130,476,250	0.43 percent
24	Wisconsin	248,758,333	0.82 percent
25	Wyoming	40,526,967	0.13 percent
26	Total	30,400,197,251	100.00 percent

27 This data is 2005 calendar year data excerpted from a study
 28 dated February 27, 2007, by Mackin & Company.

29 14. *Article XIV — Withdrawal, default, and termination.*

30 a. *Withdrawal.*

31 (1) Once effective, the compact shall continue in force
 32 and remain binding upon each and every compacting state,
 33 provided that a compacting state may withdraw from the compact
 34 by enacting a statute specifically repealing the statute which
 35 enacted the compact into law.

1 (2) The effective date of withdrawal is the effective date
2 of the repealing statute. However, the withdrawal shall not
3 apply to any tax or compliance determinations approved on the
4 date the repealing statute becomes effective, except by mutual
5 agreement of the commission and the withdrawing state unless
6 the approval is rescinded by the commission.

7 (3) The member of the withdrawing state shall immediately
8 notify the executive committee of the commission in writing
9 upon the introduction of legislation repealing this compact in
10 the withdrawing state.

11 (4) The commission shall notify the other compacting states
12 of the introduction of such legislation within ten days after
13 the commission's receipt of notice thereof.

14 (5) The withdrawing state is responsible for all
15 obligations, duties, and liabilities incurred through the
16 effective date of withdrawal, including any obligations, the
17 performance of which extend beyond the effective date of
18 withdrawal. To the extent those obligations may have been
19 released or relinquished by mutual agreement of the commission
20 and the withdrawing state, the commission's determinations
21 prior to the effective date of withdrawal shall continue to be
22 effective and be given full force and effect in the withdrawing
23 state, unless formally rescinded by the commission.

24 (6) Reinstatement following withdrawal of any compacting
25 state shall occur upon the effective date of the withdrawing
26 state reenacting the compact.

27 *b.* Default.

28 (1) If the commission determines that any compacting
29 state has at any time defaulted in the performance of any
30 of its obligations or responsibilities under this compact,
31 the bylaws, or duly promulgated rules, then after notice and
32 hearing as set forth in the bylaws, all rights, privileges,
33 and benefits conferred by this compact on the defaulting
34 state shall be suspended from the effective date of default
35 as fixed by the commission. The grounds for default include

1 but are not limited to failure of a compacting state to
2 perform its obligations or responsibilities, and any other
3 grounds designated in commission rules. The commission shall
4 immediately notify the defaulting state in writing of the
5 defaulting state's suspension pending a cure of the default.
6 The commission shall stipulate the conditions and the time
7 period within which the defaulting state must cure its default.
8 If the defaulting state fails to cure the default within
9 the time period specified by the commission, the defaulting
10 state shall be terminated from the compact and all rights,
11 privileges, and benefits conferred by this compact shall be
12 terminated from the effective date of termination.

13 (2) Decisions of the commission that are issued on the
14 effective date of termination shall remain in force in the
15 defaulting state in the same manner as if the defaulting state
16 had withdrawn voluntarily pursuant to paragraph "a" of this
17 article.

18 (3) Reinstatement following termination of any compacting
19 state requires a reenactment of the compact.

20 c. Dissolution of compact.

21 (1) The compact dissolves effective upon the date of the
22 withdrawal or default of the compacting state which reduces
23 membership in the compact to one compacting state.

24 (2) Upon the dissolution of this compact, the compact
25 becomes null and void and shall have no further force or
26 effect, and the business and affairs of the commission shall
27 be wound up and any surplus funds shall be distributed in
28 accordance with the rules and bylaws.

29 15. *Article XV — Severability and construction.*

30 a. The provisions of this compact shall be severable
31 and if any phrase, clause, sentence, or provision is deemed
32 unenforceable, the remaining provisions of the compact shall
33 be enforceable.

34 b. The provisions of this compact shall be liberally
35 construed to effectuate its purposes.

1 *c.* Throughout this compact the use of the singular shall
2 include the plural and vice versa.

3 *d.* The headings and captions of articles, subsections, and
4 paragraphs used in this compact are for convenience only and
5 shall be ignored in construing the substantive provisions of
6 this compact.

7 16. *Article XVI — Binding effect of compact and other laws.*

8 *a.* Other laws.

9 (1) Nothing in this compact prevents the enforcement of
10 any other law of a compacting state except as provided in
11 subparagraph (2).

12 (2) Decisions of the commission, and any rules, and any
13 other requirements of the commission shall constitute the
14 exclusive rule or determination applicable to the compacting
15 states. Any law or regulation regarding nonadmitted insurance
16 of multistate risks that is contrary to rules of the commission
17 is preempted with respect to the following:

18 (a) Clearinghouse transaction data reporting requirements.

19 (b) Allocation formulas.

20 (c) Clearinghouse transaction data collection requirements.

21 (d) Premium tax payment time frames and rules concerning
22 dissemination of data among the compacting states for
23 nonadmitted insurance of multistate risks and single-state
24 risks.

25 (e) Exclusive compliance with surplus lines law of the home
26 state of the insured.

27 (f) Rules for reporting to a clearinghouse for receipt
28 and distribution of clearinghouse transaction data related to
29 nonadmitted insurance of multistate risks.

30 (g) Uniform foreign insurers eligibility requirements.

31 (h) Uniform policyholder notice.

32 (i) Uniform treatment of purchasing groups procuring
33 nonadmitted insurance.

34 (3) Except as stated in subparagraph (2), any rule,
35 uniform standard, or other requirement of the commission shall

1 constitute the exclusive provision that a commissioner may
2 apply to compliance or tax determinations. Notwithstanding the
3 foregoing, no action taken by the commission shall abrogate or
4 restrict any of the following:

5 (a) The access of any person to state courts.

6 (b) The availability of alternative dispute resolution
7 under article X of this compact.

8 (c) Remedies available under state law related to breach
9 of contract, tort, or other laws not specifically directed to
10 compliance or tax determinations.

11 (d) State law relating to the construction of insurance
12 contracts.

13 (e) The authority of the attorney general of the state,
14 including but not limited to maintaining any actions or
15 proceedings, as authorized by law.

16 b. Binding effect of this compact.

17 (1) All lawful actions of the commission, including all
18 rules promulgated by the commission, are binding upon the
19 compacting states, except as provided herein.

20 (2) All agreements between the commission and the
21 compacting states are binding in accordance with their terms.

22 (3) Upon the request of a party to a conflict over the
23 meaning or interpretation of commission actions, and upon a
24 majority vote of the compacting states, the commission may
25 issue advisory opinions regarding the meaning or interpretation
26 in dispute. This provision may be implemented by rule at the
27 discretion of the commission.

28 (4) In the event any provision of this compact exceeds
29 the constitutional limits imposed on the legislature of
30 any compacting state, the obligations, duties, powers, or
31 jurisdiction sought to be conferred by that provision upon the
32 commission shall be ineffective as to that state and those
33 obligations, duties, powers, or jurisdiction shall remain in
34 the compacting state and shall be exercised by the agency
35 of the compacting state to which those obligations, duties,

1 powers, or jurisdiction are delegated by law in effect at the
2 time this compact becomes effective.

3 Sec. 2. EFFECTIVE UPON ENACTMENT. This division of this
4 Act, being deemed of immediate importance, takes effect upon
5 enactment.

6 DIVISION II

7 COORDINATING PROVISIONS

8 Sec. 3. Section 507A.4, subsection 1, Code 2011, is amended
9 to read as follows:

10 1. The lawful transaction of surplus lines insurance as
11 permitted by ~~sections 515.120 through 515.122~~ chapter 515I.

12 Sec. 4. Section 515E.9, Code 2011, is amended to read as
13 follows:

14 **515E.9 Purchasing group restrictions.**

15 A purchasing group shall not purchase insurance from an
16 insurer not admitted in this state unless the purchase is
17 effected through a duly licensed ~~agent or broker~~ producer
18 acting pursuant to ~~sections 515.120 through 515.122~~ chapter
19 515I.

20 Sec. 5. Section 522B.6, subsection 2, paragraph g, Code
21 2011, is amended to read as follows:

22 g. Excess and surplus lines insurance provided by certain
23 nonadmitted insurers pursuant to ~~section 515.120~~ chapter 515I.

24 Sec. 6. REPEAL. Sections 515.120 through 515.122, Code
25 2011, are repealed.

26 Sec. 7. CONTINGENT EFFECTIVE DATE. The provisions of this
27 division of this Act take effect at such time as the surplus
28 lines insurance multistate compliance compact, as enacted by
29 this Act in chapter 515I, becomes effective and the surplus
30 lines insurance multistate compliance compact commission
31 becomes effective for purposes of adopting rules and creating
32 the clearinghouse. The commissioner of insurance shall notify
33 the Code editor at such time as surplus lines insurance sold in
34 this state will be subject to regulation pursuant to chapter
35 515I on a date certain.

1 EXPLANATION

2 This bill creates new Code chapter 515I to enact the surplus
3 lines insurance multistate compliance compact and coordinating
4 provisions. The purpose of the compact is to carry out the
5 intention of the federal Nonadmitted and Reinsurance Reform
6 Act of 2010 of the federal Dodd-Frank Wall Street Reform and
7 Consumer Protection Act that the states establish procedures
8 to allocate the premium taxes paid by insureds for nonadmitted
9 insurance of multistate risks among the states in accordance
10 with uniform allocation formulas, including the reporting,
11 payment, collection, and allocation of those premium taxes.
12 "Nonadmitted insurance" or "surplus lines insurance" is
13 insurance procured from an insurer that is not authorized or
14 admitted to transact the business of insurance under the law of
15 the insured's home state.

16 The compact provides for the creation and establishment of
17 a joint public agency known as the surplus lines insurance
18 multistate compliance commission. The commission has the
19 power to adopt mandatory rules which establish exclusive
20 home state authority regarding surplus lines insurance,
21 allocation formulas, clearinghouse transaction data, a
22 clearinghouse for receipt and distribution of allocated
23 premium tax and clearinghouse transaction data, and uniform
24 rulemaking procedures and rules for the purpose of financing,
25 administering, operating, and enforcing compliance with the
26 provisions of the compact, its bylaws, and rules.

27 Each compacting state is entitled to one member on the
28 commission. States that do not enact the compact may enter
29 into written contracts with the commission to utilize the
30 services of and fully participate in the clearinghouse which
31 disseminates premium tax and clearinghouse transaction data.

32 The commission is empowered to establish an executive
33 committee of seven to 15 representatives to oversee the
34 administration of the compact and oversee the activities of the
35 operations committee. An operations committee of seven to 15

1 commission members is established to provide analysis, advice,
2 determinations, and recommendations regarding technology,
3 software, and systems integration to be acquired by the
4 commission and regarding the establishment of rules to be
5 adopted by the commission.

6 A legislative committee comprised of state legislators or
7 their designees is established to monitor the operations of and
8 make recommendations to the commission. Prior to the adoption
9 of any uniform standard, revision to the bylaws, annual budget,
10 or other significant matter as provided in the bylaws, the
11 executive committee of the commission is required to consult
12 with and report to the legislative committee. The commission
13 may also establish additional advisory committees to assist it
14 in carrying out its functions.

15 The commission is required to meet at least once a year.
16 Rules must be made by the commission pursuant to a rulemaking
17 process that substantially conforms to the federal 1981 Model
18 State Administrative Procedure Act. A person may file a
19 petition for judicial review of a rule.

20 The commission may fund the costs of its initial operations
21 through contributions, grants, and other forms of funding from
22 the states and other sources. The commission must collect
23 a fee payable by the insured on each transaction processed
24 through the clearinghouse to cover the ongoing cost of the
25 operations and activities of the commission and its staff in
26 a total amount sufficient to cover the commission's annual
27 budget.

28 The commission is required to monitor compacting states for
29 compliance with its bylaws and rules.

30 Any state may join the compact. The compact does not become
31 effective and binding until it is enacted by two compacting
32 states and the commission does not become effective for the
33 purposes of adopting rules and creating the clearinghouse
34 until there are 10 compacting and contracting states, or there
35 are compacting and contracting states that represent greater

1 than 40 percent of the total surplus lines insurance premium
2 volume of the states based on records of such premiums as set
3 forth in the compact based on 2005 data excerpted from a 2007
4 study. Thereafter, the compact becomes binding as to any other
5 compacting state upon enactment of the compact by that state.

6 Clearinghouse operations and the duty to report
7 clearinghouse transaction data begin on the first January 1
8 or July 1 following the first anniversary of the commission
9 effective date. For states which join the compact subsequent
10 to the commission effective date, a start date for reporting
11 clearinghouse transaction data shall be set by the commission,
12 provided that surplus lines licensees, and other interested
13 parties receive not less than 90 days' advance notice of the
14 effective date. Amendments to the compact are not effective
15 and binding upon the commission and the compacting states until
16 all compacting states enact the amendment.

17 A compacting state may withdraw from the compact by enacting
18 a law repealing the statute which enacted the compact.
19 Withdrawal from the compact does not apply to any tax or
20 compliance determinations approved on the date the repealing
21 statute becomes effective except upon mutual agreement of the
22 commission and the withdrawing state.

23 A compacting state that fails to perform its obligations and
24 responsibilities under the compact, its bylaws, and rules shall
25 be suspended from the effective date of default as fixed by the
26 commission.

27 The compact does not prevent the enforcement of other
28 state laws of a compacting state except that any state law or
29 regulation regarding nonadmitted insurance of multistate risks
30 that is contrary to the rules of the commission is preempted
31 with respect to specified matters.

32 New Code chapter 515I, which contains the compact, is
33 effective upon enactment.

34 The bill also contains coordinating provisions. Code
35 sections 515.120 through 515.122, which currently regulate

1 the sale of surplus lines insurance in the state, are
2 repealed, as are references to those provisions which are
3 contained elsewhere in the Code. The coordinating provisions
4 are effective at such time as the surplus lines insurance
5 multistate compliance compact becomes effective as to this
6 state and the surplus lines insurance multistate compliance
7 compact commission becomes effective for purposes of adopting
8 rules and creating the clearinghouse. The commissioner of
9 insurance is required to notify the Code editor at such time as
10 surplus lines insurance sold in the state will be subject to
11 regulation pursuant to Code chapter 515I on a date certain.